CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

221. (*1*) Every charge under this Code shall state the offence with which the accused is charged. Charge to state offence.

(*2*) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. Specific name of offence sufficient description.

(*3*) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. How stated where offence has no specific name.

(*4*) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(*5*) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. What implied in charge.

(*6*) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. Language of charge.

(*7*) If the accused [1][having been previously convicted of any offence, is liable, by reason of such previous conviction to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence,] the fact, date and place of the previous conviction shall be stated in the charge. If such statement [2][has been omitted,] the Court may add it at any time before sentence is passed. Previous conviction when to be set out.

Illustrations.

(*a*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception I, one or other of the three provisos to that exception apply to it. XLV of 1860.

(*b*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grevious hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it. XLV of 1860.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code: but the sections under which the offence is punishable must, in each instance, be referred to in the charge. XLV of 1860.

(*d*) A is charged, under section 184 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public-servant. The charge should be in those words. XLV of 1860.

222. (*1*) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. Particulars as to time, place and person.

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[1] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 61, for "has been previously convicted of any offence and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award,".

[2] Substituted by s. 61, *ibid.*, for "is omitted".

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence it punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations.

(*a*) A is charged under section 242 of the Indian Penal Code, with " having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word " fraudulently " being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material. XLV of 1860.

(*b*) A is charged with cheating B and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. The e were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case a material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder), on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh,. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the [1][Clerk of the State] may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges. Procedure on commitment without charge or with imperfect charge.

Illustrations.

1. A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.

XLV of 1860. 2. A is charged with forging a valuable security under section 467 of the Indian Penal Code. A charge of fabricating false evidence under section 193 may be added.

XLV of 1860. 3. A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Indian Penal Code cannot be added.

227. (*1*) Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials [2][by jury] before the Court of Session or High Court, before the verdict of the jury is returned [3]* * *. Court may alter charge.

(*2*) Every such alteration or addition shall be read and explained to the accused.

228. If the charge framed or alteration or addition made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge. When trial may proceed immediately after alteration.

229. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. When new trial may be directed, or trial suspended.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded. Stay of proceedings if prosecution of offence in altered charge require previous sanction.

231. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material. Recall of witnesses when charge altered.

232. (*1*) If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit. Effect of material error.

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[1] Substituted by the A. O. 1950 for "Clerk of the Crown".
[2] Inserted by Act 26 of 1955, s. 31(*i*).
[3] The words "or the opinions of the assessors are expressed" were omitted by Act 26 of s. 31 (*ii*).

(*2*) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction. XLV of 1860.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Three offences of same kind within year may be charged together.

234. (*1*) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, [1][whether in respect of the same person or not], he may be charged with, and tried at one trial for, any number of them not exceeding three.

(*2*) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law: XLV of 1860.

[1][Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.] XLV of 1860. XLV of 1860.

Trial for more than one offence.

235. (*1*) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Offence falling within two definitions.

(*2*) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Acts constituting one offence, but constituting when combined a different offence.

(*3*) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(*4*) Nothing contained in this section shall affect the Indian Penal Code, section 71. XLV of 1860.

[1] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 62.

Illustrations.

to sub-section (1)—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(*d*) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code.

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to sub-section (2)—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to sub-section (3)—

(*m*) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(*b*) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

When a person is charged with one offence he can be convicted of another.

237. (*1*) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

[1]* * * * * * * *

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

When offence proved included in offence charged.

238. (*1*) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(*2*) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

[2][(*2A*) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.]

(*3*) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a career. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons may be charged jointly.

[3]**239.** The following persons may be charged and tried together, namely :—

(*a*) persons accused of the same offence committed in the course of the same transaction ;

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;

(*c*) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months ;

(*d*) persons accused of different offences committed in the course of the same transaction ;

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[1] Sub-section (*2*) rep. by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 63.
[2] Inserted by s. 64, *ibid.*
[3] Substituted by s. 65, *ibid.*, for the original s. 239.

(*e*) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;

XLV of 1860. (*f*) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence ; and

XLV of 1860. (*g*) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.]

Withdrawal of remaining charges on conviction on one of several charges.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him ; and, if he shows no sufficient cause why he should not be convicted, the Magistrate [1][may convict] him accordingly.

Procedure when no such admission is made.

244. (*1*) [2][If the Magistrate does not convict the accused under the preceding section or] if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence :

[2][Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.]

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[1] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 66, for "shall convict".

[2] Inserted by s. 67, *ibid.*